

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

NETLIST, INC.,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., et al.,

Defendants.

Civil No. 2:22-cv-00293-JRG
(Lead Case)

JURY TRIAL DEMANDED

PUBLIC VERSION

**SAMSUNG'S STATEMENT OF NON-OPPOSITION TO NETLIST'S
CONTINGENT MOTION FOR RELIEF FROM PROTECTIVE ORDER (Dkt. 722)**

[REDACTED]

Samsung hereby files its notice of non-opposition to Netlist’s contingent motion for relief from the protective order, Dkt. 722. In its contingent motion, Netlist contends that, if the Court grants Samsung’s motion for relief from the protective order to present documents related to Netlist’s discovery misconduct to Judge Scarsi in the CDCA action, Dkt. 721, the Court should also grant Netlist relief from the protective order to present certain other documents to Judge Scarsi. Netlist’s allegations are simply a sideshow—undoubtedly intended to try and distract from its own serious misconduct in CDCA—misconduct that Judge Scarsi himself stated “seems to be *a pretty big discovery violation to me. One that might merit sanctions*”. Dkt. 721-3 at 504:9-25 (emphasis added). Nonetheless, if Samsung’s motion is granted, Samsung does not oppose further modification of the protective order to permit Netlist to also present additional documents to Judge Scarsi.

To be clear, however, Samsung vigorously disputes the factual account Netlist sets forth in its contingent motion. [REDACTED]

[REDACTED]

[REDACTED] *Notably, unlike Samsung, Netlist put its own discovery misconduct front and center when it tried to sneak a document into evidence at the recent CDCA trial*, even though that document had not been produced by Netlist in CDCA and was not on Netlist’s trial exhibit list. *Incredibly, Netlist’s counsel had even stamped the document with the label “IX0013”, in an effort to dress up the document as a properly disclosed trial exhibit.* After being caught red-handed, Judge Scarsi refused to let Netlist admit the document into evidence and struck all related trial testimony. Dkt. 721-3 at 504:5-505:1; Dkt. 721-4 at 596:13-22; 608:7-16. Thus, Netlist and Samsung are in fundamentally different positions, and it is Netlist’s discovery misconduct that is now at issue in CDCA – not any conduct by Samsung. In that regard, it is painfully transparent

[REDACTED]

that the only reason Netlist is even alleging discovery misconduct on Samsung's part is to try and excuse its own appalling discovery misconduct, essentially advocating for a "Let's call it even" approach.

[REDACTED]

[REDACTED]

[REDACTED] But none of those issues are before this Court and Samsung will respond in full, if and when they are raised in CDCA.

Unlike Netlist, Samsung has no reason to hide the documents at issue from Judge Scarsi. Accordingly, if the Court grants Samsung's motion for limited relief from the protective order, Samsung does not oppose granting Netlist's contingent motion.

Dated: July 16, 2024

Respectfully submitted,

/s/ Marc J. Pensabene

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically in compliance with Local Rule CV-5 on July 16, 2024. As of this date, all counsel of record have consented to electronic service and are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3)(A) and via electronic mail.

/s/ Marc J. Pensabene
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